

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

PATRICK PILLSBURY,
Plaintiff,

vs.

THE CITY OF ENOCH,
Defendant.

ORDER
AND
MEMORANDUM DECISION

Case No. 2:13-CV-948-TC

On August 17, 2013, a huge rainstorm inundated the City of Enoch and caused widespread flooding. During the rainstorm, Plaintiff Patrick Pillsbury's house in Enoch was flooded. He brings this case against Defendant City of Enoch (City), contending that negligent design of a ditch adjoining his property caused the flooding of his house. He also alleges that the flooding was an unconstitutional taking by the City.

The City moves for dismissal of Mr. Pillsbury's complaint under Federal Rule of Civil Procedure 12(b)(6).¹ To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must plead enough facts to state a plausible claim for relief. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "A claim has facial

¹The parties supplied documentation to expand the facts laid out in the complaint. But under Rule 12(b)(6), the court must consider only the allegations set forth in the complaint. To do otherwise would be engaging in a summary judgment analysis, and the court declines to convert the motion to dismiss into a motion for summary judgment.

plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id.

The court finds that Mr. Pillsbury’s complaint does not comply with the pleading requirements of Rule 12(b)(6) or Twombly. For that reason, the court GRANTS the City’s Motion, but WITHOUT PREJUDICE. The court hereby grants leave to Mr. Pillsbury to cure the pleading defects by filing a motion for leave to file an amended complaint (complete with an attached proposed complaint) no later than 21 days from the date of this Order. The City then has 21 days from the date the motion is filed to respond.

SO ORDERED this 23rd day of April, 2014.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
U.S. District Court Judge